

IT 96-18  
Tax Type:  
Issue;

INCOME TAX  
Income Earned in Illinois/Individual Residency

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE  
STATE OF ILLINOIS

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v.

TAXPAYER

Taxpayer

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RECOMMENDATION FOR DISPOSITION

**Synopsis:**

This matter is before this administrative tribunal as the result of a timely request for hearing by TAXPAYER (hereinafter referred to as the "Taxpayer" or "TAXPAYER") pursuant to a Notice of Deficiency (hereinafter referred to as the "NOD") issued to him on March 2, 1995 by the Illinois Department of Revenue (hereinafter referred to as the "Department"). The basis of the NOD is the Department's determination that the taxpayer failed to file Illinois income tax returns for the tax years ending December 31, 1985 through December 31, 1987 (hereinafter referred to as the "tax years"). The NOD asserts tax liabilities as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively.

The hearing in this matter was held on May 19, 1995. The issues to be resolved are: 1) whether the taxpayer failed to file Illinois income tax returns for the tax years; and, 2) whether penalties should be assessed as proposed. Following the submission of all evidence and a review of the record, it is recommended that the NOD be reduced to conform to the IL-1040s as ultimately filed and that the penalties be upheld based upon the recalculated amount of tax.

**Findings of Fact:**

1. For the taxable years, taxpayer was an Illinois resident and earned income in the states of Illinois and Indiana as a construction machine operator. Dept. Ex. No. 5

2. Illinois taxes were withheld from taxpayer's Illinois employers. Dept. Ex. No. 5

3. The Department has no record of IL-1040 returns filed by taxpayer, allegedly in August, 1992, for the tax years.

4. Taxpayer, while under oath, executed and submitted IL-1040 returns for the tax years at the hearing, the originals allegedly filed in August, 1992. Dept. Ex. No. 3,4 6; Taxpayer Ex. No. 7

**Conclusions of Law:**

All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) The taxpayer, as an Illinois resident, earned income in this state or was compensated by an Illinois employer. Accordingly, he was subject to Illinois income tax and was required to timely pay and file returns under the Illinois Income Tax Act. 35 ILCS 5/101 *et seq.*

The Department's Notice of Deficiency is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 5/904(b) In order to overcome the *prima facie* correctness of the Department's NOD, the taxpayer must present competent evidence, closely associated with its books and records, showing that the Department's proposed assessment is incorrect. Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968) Oral testimony is not sufficient to overcome the *prima facie* correctness of the Department's determinations. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App.3d 826 (1st Dist. 1988)<sup>1</sup>

With respect to the amount of the proposed deficiency, the taxpayer has met his burden. He presented signed, federal 1040s which he evidenced were filed for the tax years. Accordingly, taxpayer's IL-1040 returns which are premised on these federal returns, are acceptable as filed, subject to penalties.

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<sup>1</sup>. Because there are no reported cases in Illinois addressing the taxpayer's burden of proof following the introduction into evidence of the Department's Notice of Deficiency with its statutorily provided for *prima facie* correctness, I look to other Illinois revenue statutes which also give *prima facie* correctness to Department notices of tax due. The Retailers' Occupation Tax, 35 ILCS 120/1 *et seq.*, gives the Department's correction of returns and notices of tax liability *prima facie* correctness in situations, *inter alia*, wherein a person required to file a return with the Department fails to do so and the Department determines the amount of tax and penalty due based upon its best judgment and information. 35 ILCS 120/5

However, taxpayer has failed to offer sufficient evidence of reasonable cause or relevant exceptions for the abatement of the penalties assessed. At best, taxpayer did not file the required Illinois returns until August or September, 1992. But this assertion of filing at that time is not supported by any type of credible documentation. Taxpayer produced unexecuted copies of his IL-1040 returns prepared by his CPA and dated August 31, 1992, but did not produce any evidence that they were actually filed with the Department or that the taxes due were remitted to the Department. Further, taxpayer's self-serving statements as to the misplacement to his books and records by the IRS auditor and his personal and financial problems are simply not sufficient to cause any abatement of the penalties assessed. Consequently, taxpayer has failed to rebut the Department's proposed assessment of the pertinent penalties.

Wherefore, for the reasons stated above, it is my recommendation that the IL-1040 returns dated August 31, 1992, be accepted as filed on May 19, 1995, and that the taxes and penalties proposed in the Notice of Deficiency be recalculated and upheld based upon the submitted returns.

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Mimi Brin  
Administrative Law Judge